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Chairman: Mr. Hachani ..... (Tunisia)

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The meeting was called to order at 3.15 p.m.

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(b) **Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms** (*continued*) (A/53/72-S/1998/156, A/53/81-S/1998/225, A/53/82-S/1998/229, A/53/83-S/1998/230, A/53/86-S/1998/240, A/53/89-S/1998/250, A/53/93-S/1998/291, A/53/95-S/1998/311, A/53/98-S/1998/335, A/53/113-S/1998/345, A/53/115-S/1998/365, A/53/268, A/53/279, A/53/284, A/53/293 and Add.1, A/53/304, A/53/309, A/53/313, A/53/324, A/53/337, A/53/400, A/53/501; A/C.3/53/6; A/C.3/53/L.5)

(c) **Human rights situations and reports of special rapporteurs and representatives** (*continued*) (A/53/84-S/1998/234, A/53/114, A/53/120, A/53/182-S/1998/669, A/53/188, A/53/322, A/53/355, A/53/364, A/53/365, A/53/366, A/53/367, A/53/402, A/53/423, A/53/433, A/53/490, A/53/504, A/53/530, A/53/537, A/53/539, A/53/563; A/C.3/53/3 and A/C.3/53/8)

(e) **Report of the United Nations High Commissioner for Human Rights** (*continued*) (A/53/36)

Report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo (former Zaire) (continued) (A/53/365)

1. **Mr. Strohal** (Austria), speaking on behalf of the European Union, expressed regret that the Special Rapporteur had not been allowed to visit the Democratic Republic of the Congo and asked whether, in the meantime, he had received a reply to his request to do so. He requested information on steps taken to pave the way for the establishment of democracy, as strongly recommended by the Special Rapporteur, and on the current status of prison reform in the country. He wondered whether the establishment of a Ministry of Human Rights was having an impact on the human rights situation in the Democratic Republic of the Congo and whether the Special Rapporteur had been able to establish contacts with officials of that Ministry. Lastly, it would be useful to know what the Special Rapporteur saw as the main problems with the draft Constitution and whether he believed that a broad public debate on its content would help to solve them.

2. **Ms. Chomiak-Salvi** (United States of America) wondered what action the United Nations could take in view of the negative report before the Committee and the Congolese Government's failure to respond adequately to the Security Council's request for a report on human rights violations by 15 October. Expressing appreciation for the Special Rapporteur's suggestion, at the previous meeting, that the mandate of the International Criminal Tribunal for Rwanda should be expanded to cover human rights violations in the Democratic Republic of the Congo or, alternatively, that a new tribunal should be established, she wondered whether it would be useful to create a repository of information to hold as evidence for future investigations. She enquired about the Special Rapporteur's relationship with the Organization of African Unity (OAU) panel of eminent persons appointed to address the situation in the Democratic Republic of the Congo and whether he believed that the panel was capable of conducting the follow-up investigative work called for in his report. Lastly, she wondered what action the Special Rapporteur recommended taking against the Government of the Democratic Republic of the Congo for its wholesale refusal to cooperate with United Nations human rights authorities or to conduct its own human rights investigations.

3. **Mr. Mwamba Kapanga** (Democratic Republic of the Congo) said that the report on the situation of human rights in the Democratic Republic of the Congo (A/53/365) contained nothing but gratuitous allegations. The Special Rapporteur's conflictual relationship with the authorities of the Democratic Republic of the Congo was depriving the country of international expertise that could help it to improve its human rights situation. The report failed to mention that his Government had requested the Commission on Human Rights, at its most recent session, to replace the Special Rapporteur by another expert.

4. He expressed surprise at the Special Rapporteur's regrettable contention that the Government of the Democratic Republic of the Congo had never acted on any of his requests. The Special Rapporteur seemed to be unaware of the numerous letters addressed by his Government to the Secretary-General and the President of the Security Council, most of which had been published as official documents of the United Nations.

5. With regard to violations of the rights to freedom of opinion and association or the various civil and political freedoms, he would like the Special Rapporteur to provide precise statistics on the number and identity of the political prisoners allegedly detained in the Democratic Republic of the Congo. His delegation wished to know why the Special Rapporteur had made no mention of the detailed evaluation of the situation of political prisoners available at the office of the representative of the High Commissioner for Human Rights in Kinshasa. According to that evaluation, the Democratic Republic of the Congo had fewer political prisoners than most developing countries. The Special Rapporteur had also failed to mention that no official of the former regime had been deprived of his right to life. He wished to draw the Committee's attention to the fact that certain leaders of the aggression against his country were listed in the report as victims.

6. The Special Rapporteur was again falsely accusing the Congolese authorities of inciting ethnic and tribal hatred and of encouraging the Congolese population to attack a certain group of individuals. What the report did not say was that, since the beginning of the armed aggression against the Democratic Republic of the Congo by the Rwandan and Ugandan coalition, his Government had had to round up Rwandan nationals in Kinshasa and Lubumbashi in order to ensure their safety and physical integrity. It had called on the international community to show solidarity and to find other countries to host those people, but to no avail. His delegation wished to know the Special Rapporteur's views on that subject. While it was true that an unidentified radio station had been broadcasting from Bunia, in language reminiscent of the ill-famed *Radio Mille Collines*, at a time when the town had already been occupied by the Ugandan army, he wondered how the Congolese authorities could be blamed for that hate campaign.

7. He questioned the credibility of a report that, by the Special Rapporteur's own admission, had been drafted in 12 days, did not contain the views of the Congolese Government and was based on information obtained in Brussels, Geneva and Paris. Instead of complaining about the obstacles to his work, the Special Rapporteur should, for once, display intellectual integrity and surrender his post to a more objective person.

8. **Mr. Kayinamura** (Rwanda) asked the Special Rapporteur to confirm that he had indeed based his report on consultations held in Brussels, Geneva and Paris, as indicated in paragraph 4. It was doubtful that such information was sufficient to implicate a country which the Special Rapporteur had not visited *in situ*. He expressed appreciation to the Special Rapporteur for indicating, in paragraph 27, that the conflict in the Democratic Republic of the Congo remained an internal armed conflict, a fact that was not universally accepted, including by the previous speaker, who had referred to a coalition of aggressors. As for the allegations of gross human rights violations and of radio and television appeals to the Congolese people to rise up and eliminate a portion of their population, he noted that on 25 August, as he fled Kinshasa, President Kabila had broadcast a radio message, in which he had incited the Congolese people to take up machetes and other traditional weapons against the population in question. That aspect of the report should be highlighted and appropriate recommendations should be made.

9. Drawing attention to paragraph 13, he wished to clarify that his country had indeed submitted an initial progress report to the Secretary-General by the October deadline, in response to the Security Council request in document S/PRST/20.

10. **Mr. Mapuranga** (Zimbabwe) said that, since his country was mentioned in the report, he felt compelled to comment. Zimbabwe's involvement in the conflict in the Democratic Republic of the Congo was based on Article 51 of the Charter of the United Nations, which guaranteed the inherent right of individual or collective self-defence if an armed attack occurred against a Member of the United Nations, and was a direct response to the invitation from the Congolese authorities to Angola, Namibia and Zimbabwe to help defend the Democratic Republic of the Congo against an invasion by Uganda and Rwanda which threatened its security, sovereignty and territorial integrity. In terms of international law, his country's intervention could not be equated with the military intervention by Rwanda and Uganda in support of an armed rebellion, which set a dangerous precedent. The intervention of the allied forces of the Southern African Development Community (SADC) had since been endorsed by the SADC summit meeting held in Mauritius and by the Organization of African Unity (OAU).

11. With regard to the allegations in the report of the Special Rapporteur, he wished to remind the Committee that Zimbabwe was a signatory to the Geneva Conventions and the Additional Protocols thereto and that its troops had adhered to the rules of engagement recognized by international humanitarian law. Contrary to the Special Rapporteur's findings, Zimbabwean troops had engaged uniformed invasion forces, not civilians. The International Committee of the Red Cross (ICRC) had had unlimited access to their prisoners of war, who had been treated humanely at all times. The Special Rapporteur's allegations that Zimbabwean forces had indiscriminately shelled civilian

populations were also unsubstantiated and were based on information gleaned from unidentified sources. Zimbabwean troops had in fact adopted a static defence posture around Kinshasa starting on 19 August and had only engaged the invasion forces, in response to their attack on Kinshasa, during the final week of August.

12. The report described atrocities committed in the eastern part of the Democratic Republic of the Congo at a time when the Zimbabwean forces' mandate had been to fight on the western front. In paragraph 19, the Special Rapporteur identified the true parties to the conflict: the Tutsi, the Banyamulenge, the Congolese armed forces and the Rwandan Patriotic Army, on the one hand, and the remnants of the *Interahamwe*, former members of the Rwandan Armed Forces and the Mai-Mai militia, on the other. The ethnic differences between the parties had a long history which predated the involvement of Zimbabwean forces in August 1998. The human rights situation in the Democratic Republic of the Congo dated back to 1994 and the former Zaire. A distinction must be made between that situation and the current crisis, which had only begun in August 1998.

13. In conclusion, he asked the Special Rapporteur what action the international community could take to bring to justice those who had perpetrated large-scale massacres in the Hutu refugee camps in eastern Congo in order to avenge the 1994 genocide in Rwanda. Did the 1994 genocide justify the elimination of a large population of unarmed civilians, women and children in the refugee camps?

14. **Mr. Beyendeza** (Uganda), referring to paragraph 26 of the report which stated that Uganda was openly backing the rebels, clarified that his country's interest in the situation in the Democratic Republic of the Congo did not involve support for the rebel movement but rather a mission of its own, of which he was certain the Special Rapporteur was well aware and which he would explain at the appropriate time.

15. **Mr. Garretón** (Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo (former Zaire)) expressed satisfaction that the dialogue between special rapporteurs and representatives and the Governments concerned had been expanded to include all Member States. Replying to the representative of Austria, he said that, unfortunately, he had yet to receive a positive response to his requests to visit the Democratic Republic of the Congo, but that both he and the office of the representative of the High Commissioner for Human Rights in Kinshasa were making every effort to restore cooperation with the Government. The problem with the draft Constitution was not so much its provisions – although he believed that it was divisive to declare 17 May (the date on which the Kabila regime had taken power) a national holiday or to proclaim English as the official language – as the fact that the country had a tradition of constitutions imposed on the people by a single party. He would like to see the adoption of a consensual constitution by all sectors of society – political, social and ethnic. Noting that there always seemed to be an excuse for failure to establish such unity (for instance, lack of international assistance), he stressed that political will was all that was needed. He was unaware of the details of the announced prison reforms in the Democratic Republic of the Congo, but would support the Ministry of Justice in any effort to improve the deplorable conditions in the country's prisons. A Ministry of Human Rights had indeed been established, but it had not had any practical impact as yet. He had begun to establish contacts with some of its officials and hoped to continue to do so.

16. Replying to the United States representative, he said, with regard to the Security Council request to the Government of the Democratic Republic of the Congo, that outside experts, not the Governments themselves, should be reporting on the human rights situations of the countries concerned. However, since the Special Rapporteur and the joint mission of the Commission on Human Rights had been unable to enter the country and the Secretary-General's Investigative Team had not been allowed to carry out its work, political action was the only remaining option; what form it took should be decided by the Security Council. He reiterated the importance of either expanding the jurisdiction of the International Criminal Tribunal for Rwanda or establishing another tribunal to prosecute those responsible for the massacres in the Democratic Republic of the Congo.

17. Owing to the difficult circumstances in which he had had to carry out his work, relying on letters and part-time assistance in Geneva, he had thus far been unable to establish relations with the OAU panel, but he hoped to do so. With respect to the imposition of sanctions or other action, he noted that the lack of mechanisms to follow up their recommendations was a complaint generic to all special rapporteurs and representatives and not one specific to the Democratic Republic of the Congo. In that connection, he urged the political organs of the United Nations to increase their support for the work of special rapporteurs and representatives.

18. He thanked the representative of the Democratic Republic of the Congo for his measured tone, which he hoped was a signal that cooperation could be renewed. He stressed that he had been appointed by the High

Commissioner for Human Rights and the Commission on Human Rights, which had just reconfirmed his mandate, and noted that, in the past, there had been frequent requests for the replacement of special rapporteurs or representatives. For statistics on detainees, he drew attention to annex 8 to the report, which contained a list of persons arbitrarily deprived of their liberty. Although some had since been released, there was no denying that they had been prisoners during the period covered by the report. In his oral presentation to the most recent session of the Commission on Human Rights, he had acknowledged that no former leaders of the Mobutu regime had been executed. The fact remained, however, that many had been imprisoned for months without trial. Initially, it had been his understanding that members of the Tutsi ethnic group had been detained as prisoners; more recently, he had been told that they had been deprived of their liberty in order to protect them from the hostility of the population. Nonetheless, it was still not possible to monitor their human rights situation.

19. The Commission on Human Rights had stated clearly that, when a special rapporteur or representative was prevented from visiting a country by the authorities of that country, his report had the same legal value as if he had undertaken on-site investigations. The information upon which he had drawn in producing his report had been provided by a wide range of Congolese and international non-governmental organizations, which were listed in annex 1 to the report. In defining the conflict in the Democratic Republic of the Congo as an internal one, despite the involvement of certain foreign countries, he had been guided by article 3 of the Geneva Conventions of 1949.

20. He had not meant to imply that the Zimbabwean armed forces had been involved in events which had taken place prior to 2 August 1998. The references to Zimbabwe's involvement related to later events, and it was true that there had been a legal justification for the presence of the Zimbabwean armed forces. As for the massacres in the eastern part of the Democratic Republic of the Congo, the perpetrators must indeed be brought to justice. The United Nations might wish either to extend the jurisdiction of the International Criminal Tribunal for Rwanda or to establish a separate court for the Democratic Republic of the Congo.

21. Turning to the comments by the representative of Uganda, he said that the information in paragraph 26 of the report was entirely accurate.

Report of the Special Rapporteur on the situation of human rights in Myanmar (A/53/364)

22. **Mr. Lallah** (Special Rapporteur on the situation of human rights in Myanmar), introducing his interim report (A/53/364), said that during the period under review he had continued to receive reports of grave human rights violations in Myanmar, which had been corroborated by information from governmental, intergovernmental and other sources. There was a clear link between those violations and the absence of a democratic government. Referring to the memorandum submitted by the Government of Myanmar (A/C.3/53/8), he said that the situation of human rights in that country had not progressed since he had first addressed the Committee on the matter during the fifty-first session of the General Assembly when he had concluded that the National Convention process begun in 1993 did not constitute a genuine step towards democratic governance and that Myanmar's political and legal structure was at variance with international norms.

23. Over the past year, the political opposition had stepped up its legitimate activities, leading the authorities to intensify their repressive measures. Over 800 members of the National League for Democracy (NLD) had been detained, while others remained in jail, having previously been sentenced to long terms of imprisonment. Their conditions of detention were poor and a number had died in custody. The NLD leader, Aung San Suu Kyi, was subject to repeated harassment and restrictions on her movement.

24. Members of Myanmar's ethnic minorities continued to be forcibly relocated, a discriminatory practice which violated their right to freedom of movement and to own property.

25. Referring to the use of forced labour, he said that his own findings had been supported by the report of the Commission of Inquiry established by the International Labour Organization (ILO) to consider whether, and to what extent, the alleged violations existed. The Commission had concluded that there was abundant evidence of the practice, adding that those who were unwilling or unable to comply with demands for forced labour were subjected to reprisals ranging from physical abuse to torture, rape and murder.

26. The Government of Myanmar claimed that his report contained false information from tainted sources, yet it had failed to respond to the repeated requests of the General Assembly and the Commission on Human Rights to allow him to visit the country. Moreover, it maintained that the situation of human rights in Myanmar was an internal matter and that it was for the people to choose their own system of government. The people, however, had made their choice in

the general elections of 1990, and the Government was bound by its obligations under Article 56 of the Charter of the United Nations to cooperate in ensuring the promotion and protection of human rights.

27. **Mr. Tin** (Myanmar) said that his Government had always regarded the appointment of a Special Rapporteur on the situation of human rights in Myanmar as unwarranted and unacceptable interference in Myanmar's internal affairs. However, keen to pursue its cooperation with the United Nations and to demonstrate the many positive developments that were taking place, it had allowed the current Special Rapporteur's predecessor to travel to Myanmar on five separate occasions, when he had had the opportunity to visit Government ministries, development projects, border areas, prisons, schools and universities and other institutions, as well as to meet with students, members of the ethnic minorities and leaders of Myanmar's political parties. His reports had failed to reflect the true situation in the country, however.

28. The report currently before the Committee contained a litany of unsubstantiated allegations emanating from sources bearing ill will towards the Government and people of Myanmar. The Special Rapporteur had not taken account of the obstacles faced by the Government of Myanmar, while his biased and politically motivated approach did a disservice to the promotion of human rights.

29. The accusation that the armed forces systematically violated human rights was an affront to the discipline and professionalism of its members, who represented all Myanmar's ethnic groups. His Government did not have recourse to, nor did it condone, the use of forced labour. The Village and Town Acts, which allegedly constituted the legislative basis for the practice, were remnants of the colonial legal system and were to be amended in accordance with Myanmar's obligations under ILO Convention No. 29 within the time-frame proposed in the report of the ILO Commission of Inquiry. There were no grounds for the recommendation in paragraph 61 of the report that independent inquiries should be held into the deaths of two individuals in custody, since both had died of natural causes.

30. It was deeply regrettable that in compiling his report, the Special Rapporteur had not taken into account the wealth of information provided by the Government of Myanmar and, consequently, had produced a document which was entirely negative in character.

31. **Mr. Strohal** (Austria) asked what the international community could do to encourage the Government of Myanmar to enter into a dialogue with the National League for Democracy and to ensure that it acted rapidly to end the use of forced labour, in line with the recommendations of the ILO Commission of Inquiry, given that it had repeatedly refused the Commission's requests for cooperation. Referring to the flows of refugees from Myanmar, he asked how the Office of the United Nations High Commissioner for Refugees (UNHCR) might alleviate the resulting burden on neighbouring States.

32. **Mr. Winnick** (United States of America) commended the Special Rapporteur, who had produced an impressive report despite the difficulties of his mandate. He asked what the international community could do to encourage the Myanmar authorities to facilitate the work of the Special Rapporteur, and whether he had any information regarding the circumstances of the recent death in custody of a National League for Democracy deputy. Were there any mechanisms within the United Nations human rights machinery that would permit an independent investigation?

33. **Mr. Lallah** (Special Rapporteur on the situation of human rights in Myanmar) said that the international community must make the Government of Myanmar understand that respect for human rights, including civil and political rights, was not an internal matter but an obligation of Member States under the Charter of the United Nations. The Government of Myanmar also had a moral obligation to heed the will of the people as expressed in the general elections of May 1990. It was important that the people of Myanmar were aware of the international community's concern at the situation of human rights in their country. With regard to the role of UNHCR, he stressed the agency's need for support from the international community. As for the recent developments to which the United States representative had referred, he had not yet had time to carry out an investigation, but would deal with the matter in his next report to the Commission on Human Rights.

Report of the Special Rapporteur on the situation of human rights in Nigeria (A/53/366)

34. **Mr. Sorabjee** (Special Rapporteur on the situation of human rights in Nigeria), introducing his interim report (A/53/366), expressed regret that he was unable to report his findings to the General Assembly based upon a visit to Nigeria. He had hoped to carry out a fact-finding mission prior to the present session of the General Assembly, but had been unable to secure approval from the Nigerian authorities before the preparation and submission of the report. Four communications sent between May and August 1998 had gone unacknowledged, but on 16 September 1998, the Nigerian authorities had extended an invitation for him to visit Nigeria in discharge of his mandate. That visit would

take place in the third week of November 1998. He had been assured that there would be no restrictions on his travel or on the persons with whom he wished to meet, and he was keenly looking forward to the visit, after which he would submit a report to the Commission on Human Rights.

35. Owing to the current fluid situation in Nigeria and his inability to conduct an *in situ* visit, the interim report concentrated on several political changes that had taken place in Nigeria since his previous report, as well as on the criteria that must be met in order to lend credibility to the process of transition to a civilian Government and respect for human rights and the rule of law.

36. Far-reaching developments had taken place since the appointment of General Abdulsalam Abubakar as Head of State on 9 June 1998, and there had been a qualitative change for the better in the political atmosphere. Several political prisoners had been released, as well as the 20 detainees from Ogoni; the reference in paragraph 24 of the report to the Ogoni Twenty as still being held in custody was inadvertent. He was encouraged by the dissolution of Nigeria's five State-sanctioned political parties, the annulment of elections held under General Abacha, the disbanding of the five transition agencies under General Abacha's transition programme and the establishment of an Independent National Electoral Commission to oversee elections. Another welcome development was the current administration's break with the history of constraint on organized labour and professional associations by repealing restrictive trade union decrees; however, certain restrictive decrees remained in force.

37. Despite those encouraging developments, the rule of law was still not established in Nigeria. The independence and authority of the judiciary were undermined by clauses in executive decrees which pre-empted the jurisdiction of the courts and also precluded the granting of relief in respect of human rights violations. Furthermore, the right to liberty and security of person was not sufficiently protected; no safeguards were provided against the abuse of power of detention; there was no effective remedy in respect of arbitrary detentions; and the review panel that had been established was not independent and its recommendations were not binding on the Government. Despite the recommendations of the Secretary-General's fact-finding mission and the decisions of the African Commission on Human and Peoples' Rights, no qualitative changes had been made in the composition of tribunals or in the processes to be employed by them in order to conform to article 14 of the International Covenant on Civil and Political Rights and article 7 of the African Charter of Human and Peoples' Rights. The administration's intention to undertake extensive prison reform and to provide a more humane atmosphere for detainees was welcome, but prison conditions were still harsh and did not conform to the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners.

38. It was heartening that the National Human Rights Commission continued to undertake activities to promote and protect human rights despite its limited resources; if strengthened, it could contribute meaningfully to building a culture of human rights in Nigeria. Despite the establishment of a Ministry for Women's Affairs and some awareness about the importance of women's rights and of improving women's participation in the political process, discrimination was prevalent in the public and private spheres and the practices of female genital mutilation and forced marriage continued. Provisions of the Convention on the Rights of the Child also were not respected, particularly in the areas of the administration of juvenile justice and economic, social and cultural rights.

39. Available information indicated the sincerity of General Abubakar's intention faithfully to implement the programme of transition to civilian rule. The emphasis, however, must be not on individuals, who might come and go, but on strong institutions which promoted and protected human rights. Meaningful steps needed to be taken to fulfil Nigeria's commitment to respect human rights, not in form but in substance. Such steps included the restoration of institutions essential to democracy, namely: an independent judiciary whose jurisdiction was not pre-empted and which had the power to enforce the human rights of the Nigerian people and whose authority and judgements were respected and implemented; a free and responsible press; an opposition which could function freely; the creation of an environment in which citizens could exercise their right to dissent and to form unions and associations without fear; and a situation where the rights of women, children and disadvantaged groups were respected and promoted.

40. **Mr. Akunwafor** (Nigeria) said that his delegation's initial reaction to the report was, quite rightly, one of disappointment, given the far-reaching developments and the process of democratization in Nigeria during 1998. Progress had been recognized, in particular by the Commonwealth, the European Union, the United States and the Organization of African Unity (OAU). His Government's invitation to the Special Rapporteur had been dated 16 September 1998 and the report had been issued on 17 September. Given the manner in which such documents were prepared, he would have expected the Special Rapporteur to go to Nigeria as soon as he received the invitation and before completing the report. However, all doors would be

open to him when he did go, so that he could show the world what was happening in Nigeria.

41. He wished to know how the Special Rapporteur had arrived at the figure of 12 million children holding jobs in Nigeria (para. 48). The country had a serious unemployment problem; if 12 million jobs existed that could be performed by adults, how could Nigeria rank among the world's 20 poorest countries (para. 40)? Nigeria had earlier highlighted the fact that traditional practices affecting the health of women and girls posed a fundamental challenge to provisions of the Convention on the Elimination of All Forms of Discrimination against Women, and it had sponsored a draft resolution on the matter. In May 1998, the Government had in fact adopted a national policy and plan of action on female genital mutilation; the Special Rapporteur should update his records accordingly and stop criticizing Nigeria. The practice was a traditional cultural one and would take time to eliminate, but Nigeria was already on the way towards doing so.

42. The report before the Committee was based on hearsay, and he hoped that the report to be drafted following the Special Rapporteur's forthcoming visit to Nigeria would reflect the true situation in the country at the time of his visit. His Government called on the Special Rapporteur not to be prejudiced and to approach his assignment with an open mind. The international community should encourage the new administration in its determination to give Nigeria a new beginning. The United Nations was already doing a great deal in that regard: it had sent a team of election experts to Nigeria and had held a donors conference in New York in October 1998 to raise international financial assistance to help the Government conduct transparent, free and fair elections, which would be coordinated by the Organization.

43. **Mr. Strohal** (Austria), speaking on behalf of the European Union, said that the forthcoming elections in Nigeria were a core element in establishing democracy and the rule of law; the European Union was fully committed to supporting that process. He was interested in the Special Rapporteur's evaluation of ongoing preparations for the elections and in knowing how the European Union and the international community could contribute to ensuring that all sectors of Nigerian society were able to engage fully in that process. In what ways might the National Human Rights Commission be strengthened, as the Special Rapporteur had recommended? What steps could the Government take to ensure that that Commission played a more prominent role in the protection and promotion of human rights? The European Union welcomed Nigeria's invitation to the Special Rapporteur, which underlined its readiness to observe human rights and to engage in a long-term commitment in that regard.

44. **Mr. Sorabjee** (Special Rapporteur on the situation of human rights in Nigeria) said that the sources for his statements about the number of children holding jobs and the prevalence of female genital mutilation in Nigeria were the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, as noted in paragraphs 48 and 44, respectively, of his report. He would go to Nigeria with an open mind and would consult different sources in order to reach an informed assessment of the situation.

45. To strengthen the authority of the National Human Rights Commission, its members should be appointed not just by the executive branch but also in consultation with the Chief Justice of the Supreme Court, as was the practice in other countries. Its recommendations should be binding on the Government, except where cogent reasons existed which were recorded in writing and made public.

Report of the independent expert on the situation of human rights in Haiti (A/53/355)

46. **Mr. Dieng** (Independent expert on the situation of human rights in Haiti), introducing his report (A/53/355), said that he wished to commend the courage of the Haitian people, for without their great capacity for self-regulation and their heightened sense of solidarity in the face of so many misfortunes, the country would still be submerged in fire and blood. They were tired, they were thirsty for justice, and they aspired to economic and social development. They had suffered far too much at the hands of politicians and wanted to take charge of their own destiny. For the past 17 months, Haiti had been "governed" without a Prime Minister, despite the tireless efforts of President Préval. Such a situation could not fail to have an adverse impact on the human rights situation, and a solution to the crisis must be found without delay.

47. It was regrettable that the government crisis which had led to the collapse of the State apparatus had made it impossible to take vigorous action for the gradual implementation of economic, social and cultural rights, including the right to health and the right to education. The transformation of society was still being hampered by the weakness of Haiti's institutions, as reflected in the deplorable situation of women's rights and violations of the rights of the child. Without wishing to deny the Government's efforts on behalf of women, human rights activists were unanimous that much remained to be done. Violence against women had apparently not met with an

adequate judicial response, and serious flaws were reported in police procedures and practices relating to crimes of a sexual nature. The problem of *restaveks*, which was intrinsically linked to poverty, was far from being eliminated. Even more alarming was the increase in the number of street children, particularly girls. That situation was a direct result of the impoverishment of rural dwellers, the rural exodus and the resulting overpopulation of urban areas.

48. He thanked the Minister for Cooperation of Canada for agreeing to finance the construction of a juvenile court, which was extremely important in the light of the rise in juvenile delinquency, especially in Port-au-Prince. The impunity enjoyed by perpetrators of grave violations of human rights, and the right of the victims of such violations to reparation and rehabilitation, unfortunately continued to be the subject of fierce public debate in Haiti.

49. The affair of the documents seized by the United States was still relevant. He called upon that Government to fulfil its fundamental duty by contributing to the pursuit of truth and returning the documents intact and without delay, as they might well prove to be an invaluable source of information for the proper administration of justice. Similarly, he insisted on the necessity of maintaining the presence of the United Nations Civilian Police Mission in Haiti (MIPONUH) until the Haitian National Police had acquired the necessary expertise to fulfil its mandate. Withdrawing the Mission would constitute not only a major obstacle to enhancing the professionalism of the police, but also a threat to the security of the Haitian State. It was even feared that police elements might be linked to political groups, and in particular to anti-democratic sectors. Nostalgic for the dictatorship and profiting from the crisis, those groups were becoming extremely active on the ground. It was therefore no surprise that the police were increasingly attracting the interest of many political sectors, each of which would like to take control of the armed branch of the State; that being impossible, the police force had become the target and police officers were the victims of aggression.

50. The greatest challenge faced by Haiti was to build a State ruled by law through the establishment of a modern, effective, independent, democratic and equitable judicial system available to all. In that regard, he welcomed the efforts made by the European Union, which had enabled the Preparatory Commission for the Reform of Justice to benefit from the contributions of foreign experts. The reform could not succeed, however, unless two conditions were met: it had to be purely Haitian, despite the need for external support, and it had to meet the needs of all social groups. Despite social progress during the past decade, the judiciary remained part of an exclusionary State system which was inaccessible, ineffective and slow and which failed to respect human rights. As a result, the majority of the population was essentially without legal services.

51. While it was true that the reform of the justice system was the subject of publicly made commitments by political figures and organizations of civil society and was based on the 1987 Constitution, talk was not enough. The matter was urgent, and delay would pose a risk in view of the number of detainees in Haitian prisons. Out of a prison population of approximately 3,500 detainees, 85 per cent were being held in pre-trial detention, while only 15 per cent were convicted prisoners. He called on the international community to spare no effort to ensure implementation of the plan of action for the justice system. It should also pay greater attention to the question of reparations. A purely economic reading of the situation should be avoided, however; reparation must be made at various levels.

52. He was also concerned at the excesses of some police officers, who had been implicated in cases of torture, abuse, corruption and narcotics trafficking. More than 150 cases of inhuman and degrading treatment had been recorded between January and May 1998 alone. Some 66 files turned over to the courts had never been followed up, and the police officers in question had been released by lenient judges. However, he wished to commend the commitment shown by President Préval in signing the declaration recognizing the jurisdiction of the Inter-American Court of Human Rights, which meant that Haitians could have recourse to that Court.

53. **Mr. Rodrigue** (Haiti) said that his Government welcomed the report of the independent expert, which reflected the improvement in the situation of human rights in Haiti, despite the difficulties which the country was undergoing. That improvement was clear proof of the Government's commitment to ensuring full respect for human rights and fundamental freedoms. The report stressed the important steps taken by the Government which had led to that progress, and the Government was also grateful to the independent expert for having identified the problems that remained, particularly in the judicial field, and for having acknowledged the unfavourable political and socio-economic context that was preventing or delaying the implementation of other measures. His Government endorsed the expert's observations and recommendations on the decisions and changes that needed to be made in order to enhance the population's enjoyment of their fundamental rights. The Government would continue its efforts, with the support of the international community, to build the State governed by the rule of law to which the Haitian people

aspired and which was a prerequisite for sustainable economic development.

54. **Mr. Strohal** (Austria) enquired whether the large number of prisoners on remand, including young people, were under the protection of the Office of Pre-trial Detention Supervision, and asked what further steps the Haitian authorities had taken in respect of the massacres at Raboteau and Jean-Rabel. What steps was the Inspector-General of the Haitian National Police taking, firstly to clean up the police force in view of the many human rights violations perpetrated by the National Police and secondly to improve their training for the future. He would also appreciate details of any women's empowerment programmes in Haiti.

55. **Mr. Winnick** (United States of America) strongly supported the independent expert's conclusion that Haiti's political authorities must work quickly to end the political crisis in the country.

56. The independent expert had called for certain documents seized by the United States to be returned without delay and intact. In fact, his Government had offered to make the entire set of documents available to the Government of Haiti. However, under United States privacy law, the names of United States citizens had been deleted from the documents. His Government was aware that the independent expert had stressed that the documents should be returned intact, and it would consider requests to supply the deleted information if it was deemed relevant to the judicial process. The necessary mechanisms were thus in place to allow the process of combating impunity to continue.

57. He asked the independent expert what he thought the international community should do to help combat the judicial leniency and consequent impunity highlighted in the report in referring to police corruption and the work of the Office of the Inspector-General of the Haitian National Police.

58. **Mr. Dieng** (Independent expert on the situation of human rights in Haiti), responding to the comments by the representative of Haiti, said that he felt a special affinity for Haiti because it had been the first Black republic. However, he did not let that affect the independence and objectivity that were the rule in his work.

59. Responding to the representative of Austria, he said that the Office of Pre-trial Detention Supervision had been set up only a few months previously. The intention was to extend its coverage to all provinces and districts of Haiti, although for the time being coverage was limited to Port-au-Prince. The Office's remit did include juvenile delinquents, as well as female prisoners awaiting trial and male adults in the various prisons in Port-au-Prince.

60. Turning to the issue of impunity, he expected the Raboteau massacre trial, generally referred to as the *coup d'é.* trial to be wrapped up soon. He expressed gratitude to t e United States for its support in that connection, particularly for the team of forensic anthropologists who had carried out excellent work in the field. A coordinator had been appointed who would be following the Raboteau case closely, but it had required persistence with the Haitian authorities to ensure that the case was conducted in accordance with the International Covenant on Civil and Political Rights, particularly article 14 thereof. The International Civilian Mission in Haiti (MICIVIH) had sent a mission into the country's interior to raise awareness, including among the authorities, of the procedural guarantees to which those charged in the case were entitled under the Covenant. Also, considerable emphasis had been laid on the importance that the authorities must attach to the question of reparations for the victims of past human rights violations.

61. He noted that all those concerned with human rights deplored the slow progress of the Raboteau massacre trial. He hoped that there would be rapid change within the next few months so that by March 1999 he would be in a position to convey much more positive news on the matter to the Commission on Human Rights.

62. Concerning police corruption and the role of the Office of the Inspector-General of the Haitian National Police, he said that, unfortunately, the problem of corruption had to do with the defects of the judicial system. Indeed, many police officers belonging to the Inspector-General's Office feared for their own safety and that of their families, and there was now such a high level of frustration that he wondered whether the Office would be able to continue to carry out its work effectively.

63. Responding to the United States representative, he said that the international community might be able to influence the judiciary's leniency towards police implicated in drug trafficking, ill-treatment and torture by providing external support. He had discussed with the Director-General of the National Police and the Minister of Justice the possibility of assigning some eminent jurists to serve a new special office of prosecutions that would deal only with cases of ill-treatment by policemen and drug trafficking. Although the International Civilian Mission in Haiti (MICIVIH) had done excellent work in providing technical assistance and in monitoring prisons and police stations, that work should be

extended to the offices of examining magistrates and prosecutors.

64. Replying to the question by the representative of Austria concerning the status of women, he said that there had been some progress in the empowerment of women but that the Ministry of Women's Affairs unfortunately had very little funding. It was trying to work closely with women's organizations, of which the Kay Famm organization referred to in paragraph 23 of the report was particularly active. He had asked the Special Rapporteur on violence against women of the Commission on Human Rights to keep the empowerment issue particularly in mind in her discussions with non-governmental organizations, women's groups and the Ministry of Women's Affairs during her visit to Haiti that month. However, what the Ministry really needed was more resources, both human and financial.

65. Concerning the documents seized by the United States, he said that he now understood the United States position. The mechanism which the United States representative had described might perhaps be a solution, and he would take it up with the Haitian authorities and the Friends of Haiti. Even though the documents contained the names of United States citizens and divulging them might infringe United States privacy laws, combating impunity for perpetrators of serious human rights violations in Haiti was more important to victims in Haiti than the privacy of those involved. Besides, some of the persons named were Haitians with dual nationality. It was also highly regrettable that some well-known suspects, such as Emmanuel Constant, were still at liberty in the United States. He hoped that the United States representative would help to find a satisfactory solution to the problem because, once that had been done, many people would be able to breathe freely again and to give thanks to the United States Administration for its support.

66. The United States had already done much for Haiti; however, he called on the United States Administration to help solve Haiti's problems of impunity. He warned of the consequences of a rise in drug trafficking and appealed for more resources for the Haitian National Police to prevent Haiti from becoming a drug-trafficking State, which would be one more slap in the face of democracy there and yet another misfortune for Haitians.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/53/337)

67. **Ms. Jahangir** (Special Rapporteur on extrajudicial, summary or arbitrary executions) drew attention to the explanation for the absence of an interim report to the General Assembly on extrajudicial, summary and arbitrary executions which was given in paragraph 4 of document A/53/337.

68. She noted that, in the short time since her appointment, she had transmitted to the Governments concerned over 450 complaints of violations of the right to life. In 1998, a total of 61 urgent appeals to prevent imminent loss of life had been addressed to the Governments concerned; those whose lives had been threatened included 130 women and children, human rights defenders, humanitarian aid workers and members of the judiciary.

69. The trend towards the use of violence and the unjustified ending of human lives was ubiquitous and disturbing. She listed as signs of the gravity of the situation the death of a Nigerian asylum-seeker in the custody of the Belgian immigration police; the killings of large numbers of civilians in the Federal Republic of Yugoslavia and in Afghanistan; the killings of political opponents and other innocent citizens in Colombia; and the killings of members of the Mohajir Quami movement in Pakistan and of Kashmiris in India. Furthermore, in Bangladesh, young women were committing suicide or being killed after fatwas had been issued against them.

70. Often, the factors behind the violence were religious beliefs, colour, ethnicity, political opinion, gender or sexual orientation. Even when the perpetrators were not agents of the State, the blame still rested with the Government concerned, because Governments were responsible for protecting the lives of their people.

71. She expected to include in her report to the next session of the Commission on Human Rights strong recommendations to the United Nations to strengthen its technical assistance, so that Member States could increase their capacity for combating such violence. Impunity was one of the factors that made evil thrive, and far too many Governments were either insensitive to the problem or considered themselves too weak to take firm action against it, thereby rendering the efforts of the international community ineffective.

72. The approval by the Commission on Human Rights, in its resolution 1998/7, of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (the so-called human rights defenders declaration") was timely, given the rising death rate among human rights defenders in countries such as Colombia.

73. She welcomed the gender perspective which her mandate required her to bring to her work. In that

connection, she was appalled that in countries such as Brazil, Jordan, Pakistan and Turkey, the authorities continued to look on passively as women were murdered by relatives and clan members in so-called "honour killings". She had received reports – of female infanticide, the rape and murder of women in custody and suicide by women who feared rape by members of law-enforcement agencies – from countries such as Afghanistan, India, Myanmar and Sri Lanka. Also, two women had reportedly been killed as witches in the Democratic Republic of the Congo.

74. She observed that while the death penalty was not yet prohibited under international law, its imposition must meet certain minimum, internationally accepted, standards. Those standards were not met when the convicted person was a minor, was mentally handicapped or insane, was pregnant or had recently given birth, or was an elderly person, and she had received reports of legislation and legal procedures for capital punishment that did not afford the necessary safeguards from countries such as China, Egypt, the Islamic Republic of Iran, Iraq, Nigeria, Saudi Arabia and the United States. The death penalty was sometimes prescribed for vaguely worded religious or sexual offences or for ill-defined acts of treason, sedition or criticism of the State, and some countries allowed the death penalty even for minors. Often, mitigating circumstances were not given proper weight. In that connection, she had transmitted an urgent appeal to the authorities of Trinidad and Tobago in the case of a woman sentenced to death for killing her abusive partner on extreme provocation and without premeditation. She hoped that their response, when it arrived, would be positive.

75. She noted that a quarter of a million children under the age of 18, including children as young as 8 and girls, were serving in government forces or in armed rebel groups in various parts of the world.

76. She had requested invitations for country visits from the Governments of Bahrain, Mexico, Sierra Leone and Turkey. She had also requested an invitation from the Government of the Federal Republic of Yugoslavia to visit Kosovo to investigate the allegations of large-scale killings of civilians there, and was continuing the dialogue initiated by her predecessor for a country visit to Algeria. Although the recent visit to Algeria by the panel of eminent persons appointed by the Secretary-General was a step forward, it was no substitute for engaging Commission on Human Rights mechanisms.

77. She was also pursuing a request to visit Afghanistan. The situation there was particularly grim, particularly in view of the killings of a number of Iranian diplomats and one Iranian journalist and the recent history of massacres which might trigger a series of reprisals.

78. **Mr. Strohal** (Austria), speaking on behalf of the European Union, welcomed the Special Rapporteur's intention to be active in respect of capital punishment. The European Union was working towards worldwide abolition of the death penalty; in the meantime, it would work to ensure that international standards were applied.

79. **Mr. Wouters** (Belgium) said that to hear his country mentioned in connection with an extrajudicial, summary or arbitrary execution had caused him some astonishment because he could not agree that the tragic incident in question, although serious and regrettable, had been anything of the sort. The incident had taken place as the asylum-seeker, who had exhausted all avenues of appeal, was being compulsorily repatriated. Even though the Belgian Government disagreed with the classification of the woman's death as a summary execution, it would nevertheless respond to the Special Rapporteur's letter and questionnaire about the incident within the proper time and in keeping with its international obligations. A court case and other inquiries were under way which would shed light on the matter by determining who was responsible and what the punishment would be.

80. **Mr. Arda** (Turkey) welcomed the inclusion of a gender perspective in the Special Rapporteur's mandate. He recalled that Turkey had in fact supported broadening the definition of traditional practices harmful to women from one particular practice in one particular region to customs such as forced marriage, which occurred in Turkey as in many other places and sometimes drove the women concerned to suicide. An agreement in principle had recently been reached to invite the Special Rapporteur to visit Turkey. He commented that wherever there was fundamentalism, there would be violations of women's human rights. He hoped that the Special Rapporteur's visit would help Turkey to determine the true scale of the problem and would help deal with it.

81. **Mr. Ocaziones** (Colombia) pointed out that the Colombian Government had condemned the killings to which the Special Rapporteur had referred, and would have preferred to hear her refer to the fact that the Government was investigating those crimes. The Government considered human rights defence work to be extremely important, not least in connection with its political negotiations with the Colombian insurgents. He noted that the High Commissioner for Human Rights had had the opportunity to observe his Government's commitment to human rights during her recent visit to Colombia.

82. **Ms. Jahangir** (Special Rapporteur on extrajudicial, summary or arbitrary executions) thanked the representatives of Austria, Belgium, Colombia and Turkey for their support and for pointing to some of the issues which would be included in her report to the Commission on Human Rights at its next session.

83. She believed that the right approach to the question of the death penalty was to look at the offences for which it was imposed and at the groups on which it was imposed: in some countries, it could theoretically be applied to children even if it never was, whereas in other countries children were in fact subjected to the death penalty. Some countries still had laws categorizing as capital offences crimes that might have been viewed as such in the nineteenth century but surely no longer could in 1998. She was sure that when those matters were brought to the attention of the countries concerned, they would be cooperative in looking at their capital punishment legislation, no matter what problems that created with domestic public opinion. She noted that capital punishment appeared to have no bearing on crime rates; her report would urge Governments to inform domestic public opinion to that effect.

The meeting rose at 5.55 p.m.